



Iowa General Assembly

2010 Committee Briefings

Legislative Services Agency – Legal Services Division

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LEVEE AND DRAINAGE DISTRICTS STUDY COMMITTEE

Meeting Dates: December 15, 2010

Purpose. *This compilation of briefings on legislative interim committee meetings and other meetings and topics of interest to the Iowa General Assembly, written by the Legal Services Division staff of the nonpartisan Legislative Services Agency, describes committee activities or topics. The briefings were originally distributed in the Iowa Legislative Interim Calendar and Briefing. Official minutes, reports, and other detailed information concerning the committee or topic addressed by a briefing can be obtained from the committee's Internet page listed above, from the Iowa General Assembly's Internet page at <http://www.legis.state.ia.us/>, or from the agency connected with the meeting or topic described.*

LEVEE AND DRAINAGE DISTRICT LAW STUDY COMMITTEE

December 15, 2010

Co-chairperson: Senator John P. (Jack) Kibbie

Co-chairperson: Representative Helen Miller

Overview. The Committee considered presentations by all of the following individuals or panels: (1) Mr. Dean W. Lemke, Natural Resources Engineer Supervisor, Division of Soil Conservation, Department of Agriculture and Land Stewardship; (2) Mr. Russell Alderin, Mr. Todd Reinsager, and Mr. Bill Haag, residents of the city of Muscatine; (3) Mr. Scott Power, an attorney associated with Aspelmeier, Fisch, Power, Engberg & Helling, P.L.C. in the city of Burlington and Mr. Terry Martin, a trustee of the Muscatine-Louisa Drainage District 13 in the city of Muscatine; (4) Mr. John Torbert, Executive Director of the Iowa Drainage District Association; (5) Mr. Robert Brinton, attorney with the Law Offices of Brinton, Bordwell & Johnson in the city of Clarion and Mr. Don Etler, Agricultural Engineer with Kuehl and Payer, Ltd. in the city of Algona; and (6) Mr. David Dorff, Assistant Attorney General, Office of Attorney General and Mr. Wayne Gieselman, Administrator, Environmental Services, Department of Natural Resources.

Update on Drainage and Levee Districts and Issues Associated with Drainage Systems — Mr. Lemke. Mr. Lemke discussed the history, investment in, and economic importance of Iowa's drainage districts; the impact of farming upon the natural environment, including the channeling of nitrogen and phosphorous to rivers including the Mississippi and the creation of zones in the Gulf of Mexico where oxygen has been depleted below a level necessary to support marine life (the hypoxia issue), and the possibility of increased federal regulation. Mr. Lemke discussed initiatives to create and manage targeted wetlands which cost-effectively reduces the presence of nitrogen and phosphorous in drainage systems and state waters.

Management of Drainage Districts: Perspectives of Landowners — Mr. Alderin, Mr. Reinsager, and Mr. Haag. Mr. Alderin, Mr. Reinsager, and Mr. Haag, who are residents of a housing district located within a drainage district referred to as Drainage District 13, which includes parts of Muscatine County, discussed a continuing legal dispute with the district's elected trustees involving a dredging operation adjacent to their backyards. According to the presenters, the trustees have already cleared part of the land and plan to deposit the dredged soil (so called "spoil") onto their land. They noted that the district did not presently have a right of easement which allows the use of their lands; that depositing the dredged soil on their lands would adversely affect their private sewage systems; that the trustees had never previously used their land to deposit spoil; that one trustee is a neighbor owning land on the other side of the drainage ditch which is not subject to the current plan; that the trustees have wrongfully frustrated their attempts to participate in the decision-making process (e.g., prevented them from attending public meetings); and the trustees are unwilling to engage in any kind of settlement discussions. Although not a Study Committee member, Senator James Hahn attended the meeting and stated that the issue requires prompt attention.

Management of Drainage Districts: Perspectives of Trustees — Mr. Power and Mr. Martin. Mr. Power briefly described Drainage District 13, stressing the cost of maintaining the system, noting that the district elects its trustees based on the assessed value of land in the district, and opposed bills introduced during the last legislative session which would negatively impact the district and its governance (e.g., H.F. 246 amending Code §468.511). He disagreed

with the earlier presenters, stating that their rights were not frustrated by the trustees, and noted that the power of eminent domain over land is prescribed in the Iowa Constitution (Art. I, Sec. 18) and statute (Code §468.126 and Code Chapter 6B), although the drainage district has only utilized the procedure once. He mentioned two recommendations: that the compensation paid to trustees be increased and that current statutes be revised to allow drainage districts to consolidate. Mr. Martin stated that the neighboring trustee had recused himself from voting, that the land of the recused trustee had been used to dispose of spoil from previous dredgings to his detriment from the pooling of precipitation, that it was a district policy not to assume liability for the deposit of spoil on land, and that such a precedent could impose a financial hardship on the district whenever a drainage operation resulted in the need to dispose of spoil. Senator Kibbie stated that in his district the governing board was responsible to install a drainage system that allowed a farmer to drain water from a land flooded due to the accumulation of disposal of spoil. Representative Annette Sweeney stated that it might be positive to study the policies of different drainage districts. A number of members discussed the need to record easements by drainage districts that affect landowners. Mr. Power noted that many easements are only recorded on engineering plats, which are difficult to obtain.

State-Owned Lakes Located within Drainage Districts: Perspectives by Drainage and Levee Districts — Mr. Torbert, Mr. Brinton, and Mr. Etler. Mr. Torbert, Mr. Brinton, and Mr. Etler discussed the unpublished district case State of Iowa v. Board of Trustees of Palo Alto County Drainage District 80 (No. EQCVO23312) regarding Five Island Lake. In part, they discussed the court's finding that the governing board failed to provide proper notice to the state regarding the proposed annexation of the lake because it was not addressed to the Director of the Department of Natural Resources (DNR), and that the state did not receive a benefit or material benefit notwithstanding any excess water from the lake that discharged into the drainage system. They also objected to a decision of the Executive Council, based on a recommendation of the Attorney General's Office, not to consider paying the assessment as a landowner as provided by statute. Mr. Torbert and Mr. Brinton emphasized that the district was burdened by relieving the lake of excess water, and noted that another district court had recently reached an opposite conclusion in a similar case relating to Rush Lake, State of Iowa v. Board of Trustees of Joint Drainage District No. 77 in Pocahontas and Palo Alto Counties (No. CVCV125819). Mr. Etler explained that the state's avoidance of paying its assessment has resulted in an increased assessment borne by the other landowners in the district. Members of the committee and the panel discussed the Executive Council's policies regarding payment of assessments on state-owned land including lakes. According to statute, an assessment against land under the jurisdiction of DNR is to be paid by the Executive Council (Iowa Code §468.43). Members of the committee also discussed the effect of a 1997 amendment to the section which removed an exemption prohibiting the Executive Council from assessing benefits below the ordinary high water mark of a sovereign state-owned lake (2007 Iowa Acts Chapter 194).

State-Owned Lakes Located within Drainage Districts: Perspectives by State Agencies --- Mr. Dorff and Mr. Gieselman. Mr. Dorff stated that the Attorney General's Office filed the lawsuits challenging the state's obligation to pay an assessment imposed on Five Island Lake and Rush Lake. He explained that in the Five Island Lake case, the district court determined that the state did not receive a benefit, and the Executive Council is only obligated to pay assessments for receiving actual benefits. Mr. Dorff continued by explaining that land benefiting from the district is not the state-owned lake but land located downstream from the lake and impacted by the lake's overflow. He opined that any payment made pursuant to statute should be classified as a subsidy to landowners and not as a benefit to the state. Mr. Gieselman noted that the Executive Council has paid assessments to drainage districts. He agreed with Mr. Dorff that, in this case, no benefit accrues to the state because of the district's existence, and that the lake would assume its natural shape without protections benefiting landowners. He encouraged the Committee to consider how land is to be defined for purposes of drainage law (Code Chapter 468). In response to questions by Committee members, Mr. Dorff acknowledged that the Executive Council could pay assessments for any state-owned land located above the high water mark of a state-owned lake. Mr. Dorff noted that the term "benefit" as used in Code Chapter 468 could be further clarified.

Committee Discussion and Recommendations. The Committee discussed the presentations considered during the meeting and made the following recommendations:

1. The General Assembly should amend Iowa's drainage laws to require that any notice by the district's governing board to any governmental entity (e.g., DNR) be delivered to the head of the entity by a process requiring confirmation of delivery including signature (e.g., a form of certified mail).
2. The General Assembly should consider and enact legislation clarifying that a state-owned lake is to be classified and assessed to account for the burdens imposed upon a drainage district when required to account for the lake's excess water.
3. The Executive Council and the Attorney General's Office should reexamine its policies regarding the payment of assessments imposed on state-owned lakes located within a levee or drainage district and make all necessary payments to districts which have already submitted claims.
4. The General Assembly should authorize the Office of Citizens' Aide/Ombudsman to provide mediation services to

assist in settling the dispute involving the use of residential neighbors' land by the governing board of trustees in Drainage District 7 located in Muscatine County.

5. The General Assembly should consider a program administered by the Department of Agriculture and Land Stewardship and consider enacting legislation that provides for the compilation and publication of information available on the Internet in order for persons to determine if land is subject to a drainage district easement.

Draft Report. For the text of three of the proposed recommendations offered for committee consideration before being amended see the Committee's Internet site. Committee members agreed that the final language of the recommendations as discussed by the Committee would be reviewed by the co-chairpersons, with Senator Merlin Bartz agreeing to assist in reviewing those recommendations which he proposed, when the Legislative Services Agency's staff prepares the draft final report for Committee approval.

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